

### REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed July 26, 2005. Upon entry of this response, claims 2, 21, and 94 have been cancelled. The Office Action rejected all claims, and Applicants respectfully submit that the currently pending claims are in condition for allowance. Reconsideration and allowance of the application and presently pending claims are respectfully requested. In addition, Applicant does not make any admissions regarding any other statements in the Office Action that are not explicitly referenced in this response.

#### I. Fundamental Distinction of Claimed Embodiments over Cited Art

Claims 1, 16, 17, 32, 33, 56, 74, 75, 89, 90, and 105 are independent claims and have each been rejected either under 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,633,564 to Steer (hereinafter referred to as "*Steer*"). The claims rejected under 35 U.S.C. § 102(e) have been rejected as allegedly unpatentable over *Steer* alone, and those rejected under 35 U.S.C. § 103(a) have been rejected as allegedly unpatentable over *Steer* in view of some additional, secondary art.

There is at least one fundamental distinction between the claimed embodiments and *Steer*, and Applicants respectfully submit the rejections of the instant claims should be withdrawn for at least the reason of this distinction. More specifically, the claimed embodiments are directed to methods and systems for suspending and resuming transmission of information without creating significant additional overhead, where one of the steps or components involves either "fragmenting the first data stream *without creating a fragment header in response to a higher second data stream priority*" or

“fluidly resuming transmission of lower priority suspended data streams in accordance with the data stream transmission information preserved using the priority sorting mechanism without creating new frame headers for the lower priority suspended data streams.” The independent claims have been amended to confirm this distinction.

In contrast to the claimed invention, *Steer* does not disclose, teach or suggest such a system or method. In fact, Applicants submit that *Steer* teaches just the opposite. *Steer* discloses systems and methods utilizing the DOCSIS and MPEG standards. Specifically, *each* DOCSIS packet of a data stream “is formed of a payload 21 to contain the ISO8802 data packet *and a six byte header.*” *Steer*, col. 5, lines 20-22. Furthermore, the “MPEG blocks used for the transmission of DOCSIS packets” are “packaged with a 4 byte header 33.” *Steer*, col. 6, lines 44-46. *Steer* discloses a system where resuming an interrupted packet requires an additional “pointer field 59” and a “continuation field 57” for each MPEG block. *See Steer*, FIG. 5. Furthermore, because *Steer* discloses a system utilizing DOCSIS packets packaged in MPEG blocks, the system disclosed in *Steer* may require “DOCSIS packets may be placed into multiple MPEG blocks.” *Steer*, col. 8, lines 19-20.

The Office Action states that *Steer* “does not teach packets without header being transmitted over the network.” The Office Action then states that *Steer* in view of U.S. Patent Publication No. 2005/0058149 of Howe (hereinafter referred to as “*Howe*”) teach “header-less data packets being preempted and transmitted according to priority in a network.” *Office Action*, pg. 7. Applicants respectfully disagree with the Office Action’s general statements regarding the combination of these references. *Howe* discloses packets that are only “header-less as far as not having a source and destination address attached to each packet” for the purposes of making network routing more efficient.

Further, *Howe* also discloses that “the Final Destination Router 4 may have to reinsert the address for delivery to Real-Time Receiver 5.” Applicants respectfully submit that *Steer* in view of *Howe* does not teach, suggest or disclose at least the above-mentioned elements of the claimed embodiments. For at least this reason, the rejections of the independent claims should be withdrawn.

In addition, *Howe* discloses using header-less packets for routing purposes, but does suggest in combination with the teachings of *Steer* how to eliminate the overhead imposed by *Steer* for interrupting a lower priority packet with a higher priority packet and subsequently resuming transmission of the lower priority packet. While *Steer* teaches systems and methods for inserting packets into a data stream, and *Howe* contains the term “header-less,” the teachings of these two references in combination do not indicate to one of ordinary skill in the art how to implement a system or method that involves “fragmenting the first data stream *without creating a fragment header in response to a higher second data stream priority*” or “fluidly resuming transmission of lower priority suspended data streams in accordance with the data stream transmission information preserved using the priority sorting mechanism *without creating new frame headers for the lower priority suspended data streams.*” For at least these reasons, independent claims 1, 16, 17, 32, 33, 56, 74, 75, 89, 90, and 105 patently define over the cited art. Applicants respectfully submit that the application of the teachings of *Steer* is inappropriate, and for at least the foregoing reasons, the rejections should be withdrawn. Having set forth the foregoing, the undersigned will address other claims of the invention in more detail below.

For at least the same reasons, the rejections of all dependent claims should be withdrawn as well.

## **II. Claim rejections under 35 U.S.C. § 102**

The Office Action rejected currently pending claims 1, 3, 4, 5, 6, 16, 32, 33, 34, 35, 37, 38, 46, 51, 56, 57, 58, 59, 60, 65, 70, 74-79, 89 and 105 under 35 U.S.C. § 102(e) as allegedly anticipated by *Steer*. A proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983).

Applicants respectfully submit that independent claims 1, 16, 32, 33, 56, 74, 75, 89 and 105 are allowable for at least the reason that in light of the above fundamental distinction of the claimed embodiments over the cited art discussed above, *Steer* does not disclose, teach or suggest all of the elements of the claimed embodiments. Accordingly, Applicants respectfully request that the rejections of these claims be withdrawn. Furthermore, Applicants respectfully submit that the remaining dependent claims 3, 4, 5, 6, 34, 35, 37, 38, 46, 51, 57, 58, 59, 60, 65, 70, and 76-79 are allowable for at least the reason that they depend from allowable independent claims. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, Applicants respectfully requests that the rejection of these dependent claims be withdrawn.

### **III. Claim rejections under 35 U.S.C. § 103**

In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the prior art reference(s) must suggest all features of the claimed invention to one of ordinary skill in the art. *See, e.g., In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981). Further, “[t]he PTO has the burden under section 103 to establish a prima facie case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” *In re Fine, Minnesota Mining and Mfg.Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

#### **A. Rejection of claims 7, 39, 54, 55, 61, 72, 73 and 80**

The Office Action rejected claims 7, 39, 54, 55, 61, 72, 73, and 80 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe*. In light of the above fundamental distinctions of the claimed embodiments over the cited art, Applicants respectfully request that the rejection of these claims be withdrawn. Applicants respectfully submit that claim 7 is in condition for allowance for at least the reason the claim depends from allowable independent claim 1. Applicants submit that claims 39, 54 and 55 are allowable for at least the reason that they depend from allowable independent claim 33. Similarly, Applicants submit that claims 61, 72, and 73 are allowable for at least the reason that they depend from allowable independent claim 56. Finally, Applicants submit that claim 80 is allowable for at least the reason that it depends from

allowable independent claim 75. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

**B. Rejection of claims 17-20, 22, and 90-93, and 95**

The Office Action rejected claims 17-20, 22, 90-93, and 95 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe* and further in view of U.S. Patent No. 5,757,771 to Li (hereinafter referred to as "*Li*"). In light of the above fundamental distinctions of the claimed embodiments over the cited art, specifically the *Steer* and *Howe* references, Applicants respectfully request that the rejection of these claims be withdrawn. Applicants submit that independent claim 17 is allowable for at least the reasons cited above in reference to fundamental distinctions of the claimed embodiments over the cited art and for at least the reason that *Steer* in view of *Howe* and further in view of *Li* do not disclose, suggest or teach all of the elements of the claimed embodiment. Furthermore, Applicants respectfully submit that claims 18-20 and 22 are allowable for at least the reason that they depend from allowable independent claim 17. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, Applicants submit that claims 17-20 and 22 are in condition for allowance and request that the rejection of these claims be withdrawn.

Applicants submit that independent claim 90 is allowable for at least the reasons cited above in reference to fundamental distinctions of the claimed embodiments over the cited art and for at least the reason that *Steer* in view of *Howe* and further in view of *Li* do not disclose, suggest or teach all of the elements of the claimed embodiment.

Furthermore, Applicants respectfully submit that claims 91-93 and 95 are allowable for at

least the reason that they depend from allowable independent claim 17. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, Applicants submit that claims 90-95 are in condition for allowance and request that the rejection of these claims be withdrawn.

**C. Rejection of claims 8, 11, 12, 23, 26, 27, 31, 44, 49, 63, 68, 81, 84, 85, 96, 99, 100 and 104**

The Office Action rejected claims 8, 11, 12, 23, 26, 27, 31, 44, 49, 63, 68, 81, 84, 85, 96, 99, 100 and 104 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe* in view of *Li* and further in view of U.S. Patent No. 6,181,693 to Maresca (hereinafter referred to as "*Maresca*"). In light of the above fundamental distinctions of the claimed embodiments over the cited art, Applicants respectfully request that the rejection of these claims be withdrawn. Applicants respectfully submit that claims 8, 11, and 12 are in condition for allowance for at least the reason the claims depend from allowable independent claim 1. Applicants submit that claims 23, 26, 27, and 31 are allowable for at least the reason that they depend from allowable independent claim 17. Similarly, Applicants submit that claims 44 and 49 are allowable for at least the reason that they depend from allowable independent claim 33. Applicants submit that claims 63 and 68 are allowable for at least the reason that they depend from allowable independent claim 56. Applicants further submit that claims 81, 84, and 85 are allowable for at least the reason that they depend from allowable independent claim 75. Finally, Applicants submit that claims 96, 99, 100, and 104 are allowable for at least the reason that they

depend from allowable independent claim 90. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

**D. Rejection of claims 9, 10, 24, 25, 43, 45, 47, 48, 50, 52, 62, 64, 66, 67, 69, 71, 82, 83, 97, and 98**

The Office Action rejected claims 9, 10, 24, 25, 43, 45, 47, 48, 50, 52, 62, 64, 66, 67, 69, 71, 82, 83, 97, and 98 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe* in view of *Li* in view of *Maresca* and further in view of U.S. Patent No. 5,497,371 to Ellis *et al.* (hereinafter referred to as "*Ellis*"). In light of the above fundamental distinctions of the claimed embodiments over the cited art, Applicants respectfully request that the rejection of these claims be withdrawn. Applicants respectfully submit that claims 9 and 10 are in condition for allowance for at least the reason the claims depend from allowable independent claim 1. Applicants submit that claims 24 and 25 are allowable for at least the reason that they depend from allowable independent claim 17. Similarly, Applicants submit that claims 43, 45, 47-48, 50, and 52 are allowable for at least the reason that they depend from allowable independent claim 33. Applicants submit that claims 62, 64, 66, 67, 69, and 71 are allowable for at least the reason that they depend from allowable independent claim 56. Applicants further submit that claims 82 and 83 are allowable for at least the reason that they depend from allowable independent claim 75. Finally, Applicants submit that claims 97 and 98 are



allowable for at least the reason that they depend from allowable independent claim 90.

*In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

**E. Rejection of claims 13-15, 28-30, 40-42, 86-88, and 101-103**

The Office Action rejected claims 13-15, 28-30, 40-42, 86-88, and 101-103 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe* in view of *Li* in view of *Maresca* and further in view of U.S. Patent No. 4,688,225 to Fukami (hereinafter referred to as "*Fukami*"). In light of the above fundamental distinctions of the claimed embodiments over the cited art, Applicants respectfully request that the rejection of these claims be withdrawn. Applicants respectfully submit that claims 13-15 are in condition for allowance for at least the reason the claims depend from allowable independent claim

1. Applicants submit that claims 28-30 are allowable for at least the reason that they depend from allowable independent claim 17. Similarly, Applicants submit that claims 40-42 are allowable for at least the reason that they depend from allowable independent claim 33. Applicants further submit that claims 86-88 are allowable for at least the reason that they depend from allowable independent claim 75. Finally, Applicants submit that claims 101-103 are allowable for at least the reason that they depend from allowable independent claim 90. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

**F. Rejection of claims 36 and 53**

The Office Action rejected claims 36 and 53 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe* in view of *Li* and further in view of

U.S. Patent Publication No. 2002/0010793 by Noll (hereinafter referred to as "*Noll*"). In light of the above fundamental distinctions of the claimed embodiments over the cited art, Applicants respectfully request that the rejection of these claims be withdrawn. Applicants respectfully submit that claims 36 and 53 are in condition for allowance for at least the reason the claims depend from allowable independent claim 33. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

#### **IV. Claim rejections under 35 U.S.C. § 112**

The Office Action rejected claims 15, 30, 42, 88 and 103 under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Accordingly, Applicants have amended the above-mentioned claims for the purpose of advancing prosecution. Applicant submits that the claims as amended comply with 35 U.S.C. § 112 and are therefore held in condition for allowance. Therefore, Applicants respectfully submit that the rejection be withdrawn.

#### **V. Cited Art Made of Record**

The cited art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

**CONCLUSION**

Applicants respectfully submit that all pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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